

**WILLIAMSBURG CITY COUNCIL  
FEBRUARY 10, 2005  
MINUTES**

The Williamsburg City Council held its regular monthly meeting on Thursday, February 10, 2005, at 2:00 p.m., in the Council Chambers of the Stryker Building.

**ATTENDANCE**

Present were Ms. Zeidler, Messrs. Haulman, Scruggs, Freiling and Chohany. Also present were City Manager Tuttle, City Attorney Phillips, and City Clerk Crist.

Staff Attending: Department Heads Clayton, Hudson, Nester, Serra, Weiler, Deputy Chief Sloggie, and Assistant City Manager Miller.

**CALL TO ORDER**

Mayor Zeidler called the meeting to order.

**COUNCIL MINUTES**

*Mr. Chohany Moved that City Council Approve the Minutes of January 10, 2005, and the Minutes of January 13, 2005, with one correction to page 8, at the end of the first paragraph, to insert the words "The Motion Was Seconded by Chohany." The Motion was Seconded by Mr. Haulman.*

*Recorded Vote on the Motion:*

*Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany*

*No: None*

**SPECIAL PRIVILEGE**

**Excellence in Service to Williamsburg Award Presented to Oatha Jones, Water & Sewer Department**

Mayor Zeidler said that this is a special award because this employee is recognized by his coworkers and peers. She asked Mr. Jones to join her at the podium where she read the recognition outlining Mr. Jones' work during his 33 years of service to the city. Mr. Jones was presented with the Excellence in Service to Williamsburg Award plaque (applause). Mr. Jones thanked everyone and said he was pleased to be working at something that he enjoyed as a child—playing in the water and mud—and that he has been very happy in his work.

**PUBLIC HEARINGS**

**PCR #05-001: Revision of Chapter 21, Zoning, of the Williamsburg City Code, Provisions for Proffered Conditions as Allowed by Sec. 15.2-2298 of the Code of Virginia, Proposed Ordinance #05-01**

Reference for this matter was Mr. Nester's report dated February 10, 2005, which included a copy of the proposed ordinance.

Mr. Nester reviewed the information provided in his report. The city's Zoning Ordinance allows the acceptance of voluntary proffers as a part of a rezoning request. Since the city adjoins two high growth counties, the Code of Virginia provides for the city to accept

proffers of cash or real property that are related to zoning. The added flexibility is important to the city in light of the upcoming development of the Riverside property on the east side of Quarterpath Road. The proposed ordinance amends the Zoning Ordinance regarding Conditional Zoning. The Planning Commission held a public hearing on this matter and recommends that Council adopt the proposed ordinance.

Mayor Zeidler opened the public hearing.

No one wished to speak.

The hearing was closed.

Mr. Nester confirmed that this will still allow proffers of any sort that are legal, and this ordinance amendment adds cash and real estate for additional flexibility in proffers. This has not been an issue in the past.

*Mr. Haulman Moved That City Council Adopt Proposed Ordinance #05-01, An Ordinance Amending Chapter 21, Zoning, By Revising Article II, Division 4, Conditional Zoning, Pertaining to Acceptance of Proffers. The Motion Was Seconded by Mr. Freiling.*

*Recorded Vote on the Motion:*

*Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany*

*No: None*

**ARB #04-084: Appeal by Harry Hart of the Decision of the Architectural Review Board to Deny the Request to Replace Existing Wood Siding with Hardiplank Siding at 505 Capitol Landing Road**

Reference for this item was Mr. Nester's report dated February 10, 2005. Carolyn Murphy reviewed the Mr. Hart's application for appeal of the Architectural Review Board's (ARB) decision. The ARB denied the application to replace the existing wood siding with Hardiplank siding based on the Design Review Guidelines which state that "synthetic siding the resembles authentic horizontal wood siding (i.e. Hardiplank) may be acceptable for new buildings that are not constructed of wood or brick," and further states "that wherever possible, existing wood siding should be retained, repaired, and repainted." Mr. Hart's house has wood siding and the Board voted to uphold the Guidelines to retain the wood siding.

Ms. Murphy provided Council with a history of Hardiplank siding and reviewed the Architectural Preservation District (APD) zones. This property is located in a Zone One Architectural Preservation District. Fourteen homes in this section are on the Locally Significant Architecture list. Mr. Hart's home is not currently on the list. Council was shown photographs of the dwelling elevations, as well as a map of inventoried brick and wood siding structures in the area.

Ms. Murphy said that prior to its decision on this matter, the ARB spent months reviewing synthetic siding (i.e. Hardiplank), including discussions with local contractors about the use of different sidings and their costs. (Council was provided with samples of various Hardiplank sidings and wood siding.) While some residents say it is hard to find good wood siding, it is plentiful and available in our area. Based on the ARB's findings, the board

decided to maintain the requirement to replace wood siding with wood siding in the Architectural Preservation District. They believed that replacing wood siding with synthetic siding would set a precedent. Mr. Hart's application was heard and denied following the boards study of siding treatments. Council needs to decide whether to affirm, reverse or modify, in whole or part, the decision of the Architectural Review Board to deny this request. Ms. Murphy pointed out that Mr. Walker and Mr. Hertzler, members of the ARB, were present.

Council members and Ms. Murphy discussed the application of the Design Review Guidelines and the architectural significance of homes located in the Zone One Preservation District. Ms. Murphy addressed the inventory of wood and brick homes on this street and noted that Mr. Hart's home would be added when the list of Architecturally Significant Homes was updated.

Mayor Zeidler opened the Public Hearing.

**Harry Hart, 141 Rolfe Road, owner of 505 Capitol Landing Road** (his daughter and her family reside there), referred to his letter of appeal in Council's packet (attached). In his opinion, the Design Guidelines are prescriptive guidelines that only frustrate citizens when they desire to improve their property. The cement board would not change the appearance of his house, has a better warranty, and is better fire rated than wood. This house was built in 1948. There are homes on Matoaka Court that were built at the same time, with almost the same design, but they are not on the list of Locally Significant Architecture. They are in a Zone One, but would be allowed to have cement board.

**Bill Walker, Vice-Chair of ARB**, said that this was a difficult decision for the board to make. Staff spent a great deal of time working on this issue. The board felt that it was important to remain consistent with the guidelines, with the hope that in time other homes that are different can be converted back to the original siding and preserved. The board members were concerned about the guidelines and consistency.

**Joe Hertzler, 605 College Terrace, member of ARB and Planning Commission**, noted that he purchased and restored an older home with wood siding, and spoke in support of the ARB's decision. The ARB members deeply evaluated this issue and he appreciated their knowledge and professionalism. The board recommended that synthetic siding is not appropriate for some of the older homes in Williamsburg. Preserving older neighborhoods and keeping them vibrant means keeping the neighborhoods beautiful one house at a time. Council should consider finding a way to revert homes with other siding treatments back to the original wood siding. If Council cannot find a way, then perhaps the ARB's decision should be reversed and Mr. Hart allowed using Hardiplank. Mr. Hart does have a compelling argument. Mr. Hertzler said he would like to see Mr. Hart's home stay wood siding and other homes around him revert back to wood siding.

No one else wished to speak. The hearing was closed.

As requested by the Mayor, Ms. Murphy reviewed the Design Review Guidelines pertaining to siding.

Mr. Haulman said this is about preserving the visual character of a neighborhood and the community. Each decision that is made plays a role. The city should consider what kinds of incentives are needed to insure that structures can be reverted back to the original siding. He would vote to uphold the ARB's decision.

Ms. Murphy explained the development of the three Architectural Preservation Districts and where they are located in the city. Capitol Landing Road is designated Zone One because of the concentration of modest structures on the street. She noted that some older homes in the city have been restored to the original wood siding, because the wood was preserved by the application of aluminum siding.

Mr. Chohany stated his concerns about the inconsistency of allowing wood siding and synthetic siding in the same neighborhood, and that these restrictions could be discouraging to property owners who want to invest in their property. Although the ARB made the right decision in interpreting the guidelines, the issues and arguments should be addressed. He would support to reverse the ARB's decision.

Mr. Scruggs commented that historic preservation is the primary mission of the ARB, but there are different levels of historic preservation. He appreciated how the ARB made its decision based on the guidelines. He reviewed the five zoning criteria which related to (1) historic value, (2) compatibility with other historic buildings, (3) appropriateness of the building material, (4) relationship of the proposal to design criteria by review board, and (5) the compatibility with the comprehensive plan's goals for historic preservation, visual quality and design. The only criteria not met was the fourth because of the recommendation of the ARB. He would consider these criteria when making his decision. There could be consequences if the city is overly restrictive. Communities change and grow. This proposal does not degrade the neighborhood, and he could not tell the difference between the appearance of wood and synthetic siding. In the previous case heard by Council, involving the house on Prince George Street adjacent to Colonial Williamsburg property, he would have approved of the use of Hardiplank siding if the house were located in a different area such as Capitol Landing Road or Peacock Hill. He would support a motion to reverse the decision of the ARB.

Mr. Freiling added that regarding the prior case on Prince George Street, the significance of the structure itself was also important to the decision, as well as it being near the Historic Area.

Ms. Murphy said the ARB looked at the Hart house and believed that any deteriorated wood siding could be replaced and the house repainted to get rid of the lead paint. If this house was demolished, the ARB would most likely not approve a new structure with Hardiplank. The Board felt that wood siding best preserved the character of the home and neighborhood. Perhaps one day that opinion will change if a better synthetic product comes on the market and wood is not available.

Mr. Phillips said that when Council passed the Zoning Section that created the Architectural Review District and the ARB, it empowered the ARB to propound guidelines. The guidelines were submitted, received, and accepted by Council. Council is the appellant body and has the ability to determine if the guidelines have been appropriately applied.

Mr. Freiling clarified that Council's role is to determine if the ARB correctly applied the design guidelines as written.

Mayor Zeidler did not agree with Mr. Scruggs and believed that all five criteria were met. Mr. Hart's home would be added to the list of Locally Significant Architecture (originally created in 1992) when it is updated, as would other homes over 50 years of age.

Mr. Chohany believed that the ARB correctly applied the guidelines. However, he questioned if the guidelines are as accurate as they need to be. Hardiplank cannot be distinguished from wood at a distance. The overall life and integrity of the neighborhood should be considered and property owners should be provided incentives to reinvest in themselves and to keep properties from becoming dilapidated. That would be a better image for the city.

*Mr. Chohany Moved That City Council Reverse the Architectural Review Board's Decision To Deny ARB #04-08, the Request of Harry Hart to Replace Existing Wood Siding with Hardiplank Siding at 505 Capitol Landing Road. The Motion Was Seconded by Mr. Scruggs.*

Ms. Murphy stated that if the decision of the ARB was overturned, it would create a precedent in that the guidelines are debatable. Council could see more appeals to overturn ARB decisions. Mayor Zeidler said the guidelines and standards are developed to preserve and protect the city's character and its varied neighborhoods, and she would not favor action that would undermine the city's own guidelines. The ARB has thoroughly and carefully researched these guidelines and did not change them. The board did what they believed was the right thing for Williamsburg, which is their purpose.

Mr. Chohany believed this was a debatable issue and he would side with the property owner.

Mr. Haulman said that the ARB has determined that the current state of siding technology is not good enough. Council must give serious consideration to its decision, and the unintended consequences on future decisions of the ARB and Council.

Mr. Scruggs said he was looking at this in a broader sense and thought there was flexibility in the guidelines. He did not feel bound by the ARB's decision in this case and did not believe that reversing the decision would open the gates for appeal. Each case should be addressed independently.

Mr. Freiling said there was great value in preserving original material when there is a structure that is historically or architecturally significant. This is not that type of building and the importance of preserving the original material diminishes. He referred to Mr. Phillips' comments and Council's legal responsibility. Council is charged with looking at the ARB's decision in properly applying the guidelines. He believed the ARB did that, but he questioned the long term benefit to the community. He must put personal feelings aside and support the ARB's decision.

*Recorded Vote on the Motion:  
Aye: Scruggs, Chohany*

*No: Freiling, Zeidler, Haulman*

*The Motion Failed.*

*Mr. Haulman Moved That City Council Affirm the Decision of the Architectural Review Board to Deny ARB #04-084, The Request of Harry Hart to Replace Existing Wood Siding with Hardiplank Siding at 505 Capitol Landing Road. The Motion was Seconded by Mr. Freiling.*

*Recorded Vote on the Motion:  
Aye: Freiling, Zeidler, Haulman  
No: Scruggs, Chohany*

*The Motion Carried.*

**REPORTS**

**Monthly Financial Statement**

*The Monthly Financial Report was received and ordered filed.*

Wireless Telecommunication local taxes: Mr. Serra explained the figure was especially high because a check was received from Verizon in the amount of \$90,000. This amount corrects cross jurisdictional problems.

Landscape: Mr. Serra explained that last year's Landscape expenses line item was overstated because of Hurricane Isabel costs.

Miscellaneous Collected Revenue: The \$25,000 reflected in this account was received from James City County for the new dog park at Waller Mill.

**Monthly Departmental Operating Reports**

*The Monthly Departmental Operating Reports were received and ordered filed.*

**City Manager Reports**

**2005 Asphalt Overlay Schedule-Award of Bid**

Reference for this item was Mr. Tuttle's report dated February 1, 2005. Mr. Clayton reviewed the information concerning the bid. Bids were received for the annual asphalt overlay schedule for FY 05. The low bid was received from Basic Construction in the amount of \$333,758.15. This year's overlay work will begin in May and include Francis Street, Waller Street, North Henry Street, Second Street, Page Street, Mimosa Drive, Bayberry Lane, and Capitol Court. Sufficient funds are available in the Public Works-Street Division operating budget to award the bid. Mr. Clayton asked for Council's authorization to execute the contract and concluded by saying that Basic Construction is well qualified and has done asphalt work for the city over the years. He confirmed that his department would work with the affected neighborhoods when the overlay was being done.

*Mr. Scruggs Moved That City Council Authorize the City Manager to Execute a Contract with Basic Construction, Incorporated, for the 2005 Asphalt Overlay Schedule Based on Unit Prices in the Amount of \$333,758.15. The Motion Was Seconded by Mr. Chohany.*

*Recorded Vote on the Motion:*

*Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany*

*No: None*

### **Virginia Peninsula Public Service Authority Agreement-Household Chemical Collection Program**

Reference for this item was Mr. Tuttle's report dated February 1, 2005, which included a copy of the proposed agreement with VPPSA. Mr. Clayton provided information regarding the agreement. It has been reviewed by Mr. Phillips and staff recommended Council's authorization to execute. The city has been under agreement with VPPSA for the past seven years to provide the Household Chemical Collection Program. Clean Harbors, Inc. will provide service during the new agreement period to Peninsula communities. The overall bid for service is almost 20% less than the current fee. Mr. Clayton explained collection and the schedule at the Tewning Road collection site.

Mr. Clayton recognized the presence of Mr. Steve Geissler, Executive Director of VPPSA. Mr. Clayton confirmed that Clean Harbors was a reputable company that was appropriately insured for general liability.

*Mr. Chohany Moved That City Council Authorize the City Manager to Execute the Household Chemical Collection Service Agreement with VPPSA. The Motion Was Seconded by Mr. Freiling.*

*Recorded Vote on the Motion:*

*Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany*

*No: None*

### **NEW BUSINESS**

Williamsburg Performing Arts Center Group: Mayor Zeidler reported that the Performing Arts Center Group has prepared a draft business plan. Council members are looking at the plan and appreciate the work of the group. Council will look forward to hearing about the group's ongoing discussion with the School Board.

### **OPEN FORUM**

Mayor Zeidler invited comments.

No one wished to speak. The session was closed.

### **CLOSED SESSION**

Mr. Haulman Moved that City Council go into Closed Session pursuant to Section 2.2-3711 of the Code of Virginia for the purpose of discussing one property matter per subparagraph 3 regarding acquisition of property for park protection of which discussion in an open meeting would adversely affect bargaining or negotiation strategy of public body; and one legal matter per subparagraph 7 for the purpose of consultation on specific legal matters requiring the provision of legal advice by counsel, concerning legal expenses. The Motion was Seconded by Mr. Freiling.

*Recorded Vote on the Motion:*

*Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany*

No: None

The meeting adjourned at 3:31 p.m. The Mayor called a five-minute recess.

At 4:38 p.m., Council met in Open Session.

Mr. Haulman Moved the Certification of Closed Meeting. The Motion was Seconded by Mr. Freiling.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None

### **CERTIFICATION OF CLOSED MEETING**

Date: February 10, 2005

Motion: Mr. Haulman; Second: Mr. Freiling

WHEREAS, the City Council of the City of Williamsburg has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by the City Council that such meeting was conducted in conformity with Virginia Law.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Williamsburg hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed session were heard, discussed or considered by the City of Williamsburg.

VOTE:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None

Absent During Vote: None

Absent During Meeting: None

The meeting adjourned at 4:39 p.m.

Approved: March 10, 2005

Shelia Y. Crist  
Clerk of Council

Jeanne Zeidler, Mayor